

1 APAAC's PROPOSED CHANGES TO RULE 38(d)

2
3 (d) Clinical Law Professors and Law Students

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5 1. *Purpose.* The bench and the bar are primarily responsible for providing competent legal
6 services for all persons, including those unable to pay for these services. This rule is
7 adopted as one means of providing assistance to practicing attorneys in providing such
8 services, ~~and~~ to encourage law schools and the State of Arizona and its political
9 subdivisions to provide clinical instruction in trial work of varying kinds, and to facilitate
10 volunteer opportunities for students in pro bono contexts.

11 2. *Activities of Clinical Law Professors.* A clinical law professor not a member of the state
12 bar but certified pursuant to paragraph (d)(7)(A) of this rule may appear as lawyer, solely
13 in connection with supervision of a clinical law program approved by the dean and
14 faculty of a law school in Arizona which is either provisionally or fully approved and
15 accredited by the American Bar Association, in any court or before any administrative
16 tribunal in this state in any of the matters enumerated in paragraphs (d)(3)(A)-(D) of this
17 rule on behalf of any person, if the person on whose behalf the appearance is being made
18 has consented in writing to that appearance. Such written consent shall be filed in the
19 record of the case and shall be brought to the attention of the judge of the court or the
20 presiding officer of the administrative tribunal.

21 3. *Activities of Eligible Law Students.*

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23 A. As used in this Rule, "eligible law student" means a person who is currently enrolled in
24 a juris doctorate program that is either provisionally or fully approved by the American
25 Bar Association, or a person who has received such a juris doctorate degree within the
26 previous twelve months and has either applied to take the Arizona Bar Examination,

1 has taken that Examination and is awaiting the results, or has taken and passed that
2 Examination but has not yet been admitted to the Arizona State Bar. An eligible law
3 student meeting the requirements of paragraph (d)(5) may appear in any court or before
4 any administrative tribunal in this state on behalf of any person if the person on whose
5 behalf the student is appearing has consented in writing to that appearance and the
6 supervising lawyer has also indicated in writing approval of that appearance, in the
7 following matters:

- 8 i. any civil matter: in such cases in justice, municipal, and magistrate courts, the
9 supervising lawyer is not required to be personally present in court if the person
10 on whose behalf an appearance is being made consents to the supervising
11 lawyer's absence;
- 12 ii. any misdemeanor criminal defense matter in justice, municipal, and magistrates
13 courts: in such cases the supervising lawyer is not required to be personally
14 present in court except during trial if the person on whose behalf an appearance is
15 being made consents to the supervising lawyer's absence.
- 16 iii. any felony criminal defense matter in justice, municipal, and magistrate courts
17 and any criminal matter in superior court: in such cases the supervising lawyer
18 must be personally present throughout the proceedings and shall be fully
19 responsible for the manner in which they are conducted.

20 Notwithstanding anything hereinabove set forth, the court may at any time and in any
21 proceeding require the supervising lawyer to be personally present for such period and
22 under such circumstances as the court may direct.

23 B. An eligible law student meeting the requirements of paragraph (d)(5) may also appear
24 in any criminal matter on behalf of the state or any political subdivision thereof with
25 the written approval of the prosecuting attorney or that attorney's authorized
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1 representative. In all appearances in criminal cases a supervising lawyer must be
2 present except when such appearance is in justice, municipal, or magistrate courts.

3 C. In each case, the written consent and approval referred to above shall be filed in the
4 record of the case and shall be brought to the attention of the judge of the court or the
5 presiding officer of the administrative tribunal. In addition, the student shall orally
6 advise the court on the occasion of the student's initial appearance in the case of the
7 certification to appear as a law student pursuant to this rule.

8 D. Under the general supervision of the supervising lawyer, but outside his personal
9 presence, an eligible law student meeting the requirements of paragraph (d)(5) may
10 engage in other activities, including:

- 11 i. preparation of pleadings and other documents to be filed in any matter in which
12 the student is eligible to appear, but such pleadings or documents must be signed
13 by the supervising lawyer;
- 14 ii. preparation of briefs, abstracts and other documents to be filed in appellate courts
15 of this state, but such documents must be signed by the supervising lawyer;
- 16 iii. assistance to indigent inmates of correctional institutions or other persons who
17 request such assistance in preparing applications and supporting documents for
18 post-conviction relief, except when the assignment of counsel in the matter is
19 required by any constitutional provision, statute, or rule of this court (if there is a
20 lawyer of record in the matter, all such assistance must be supervised by the
21 lawyer of record, and all documents submitted to the court on behalf of such a
22 client must be signed by the lawyer of record);
- 23 iv. rendering legal advice and performing other appropriate legal services, but only
24 after prior consultation with and upon the express consent of the supervising
25 lawyer.

1 E. An eligible law student meeting the requirements of paragraph (d)(5) may participate
2 in oral argument in this Court and the court of appeals, but only in the presence of the
3 supervising lawyer.

4 F. Students who meet the requirements of paragraph (d)(6) below may, at the invitation
5 and request of the court, appear as a law student volunteer to assist the proceeding in
6 any civil matter involving an otherwise unrepresented individual in an uncontested
7 proceeding without entering an appearance as counsel. Such students must be directly
8 supervised in person by an attorney associated with a volunteer legal services
9 program as described in paragraph (d)(6)(B).

10 G. Except for students participating under the requirements of paragraph (d)(6) below,
11 all activities under this rule must be part of ~~the~~ a law school's educational and clinical
12 law practice program approved by the dean and faculty of a law school either
13 provisionally or fully approved and accredited by the American Bar Association, or
14 must be part of a legal internship program conducted by the state or any political
15 subdivision thereof. In the case of a law school program, Aa written statement of the
16 contents of the school's educational and clinical law practice program of the law
17 school's juris doctorate program either provisionally or fully approved and accredited
18 by the American Bar Association shall be filed with the executive director of the state
19 bar not later than thirty days prior to the commencement of the program. In the case
20 of a legal internship program conducted by the state or any political subdivision
21 thereof, the governmental agency involved shall file a written statement of the scope
22 of the internship program and the education and training to be provided to the legal
23 interns with the executive director of the state bar not later than thirty days prior to
24 the commencement of the program.

25 4. *Requirements and Limitations for Clinical Law School Professors.* In order to make an
26 appearance as lawyer pursuant to this rule, the clinical law professor must:

- 1 A. be duly employed as a faculty member of a law school in Arizona which is either
2 provisionally or fully approved and accredited by the American Bar Association
3 for the purpose, *inter alia*, of instructing and supervising a clinical law program
4 approved by the dean and faculty of such law school;
- 5 B. be admitted by examination to the bar of another state or the District of Columbia;
- 6 C. neither ask for nor receive any compensation or remuneration of any kind for such
7 services from the person on whose behalf the services are rendered; and
- 8 D. certify in writing that the clinical law professor has read and is familiar with the
9 Arizona Rules of Professional Conduct and the Rules of the Supreme Court of
10 Arizona and statutes of the State of Arizona relating to the conduct of lawyers.
- 11 5. *Requirements and Limitations for Eligible Law Students.* Except for students making an
12 appearance pursuant to paragraph (d)(3)(F), in order to make an appearance pursuant to
13 this rule, the eligible law student must:
- 14 A. be duly enrolled in a law school's juris doctorate program either provisionally or
15 fully approved and accredited by the American Bar Association, or have received
16 such a juris doctorate degree within the previous twelve months and have either
17 applied to take the Arizona Bar Examination, have taken that Examination and be
18 awaiting the results, or have taken and passed that Examination but have not yet
19 been admitted to the Arizona State Bar; and be supervised by a member of the
20 State Bar of Arizona, and be certified by the deans of the law school, or by the
21 head of a state agency or any political subdivision thereof, or his or her designee,
22 on a form approved by the clerk of this Court showing compliance with Rules
23 38(d)(3)(F), 38(d)(5)(B) and (C), and 38(d)(7);
- 24 B. have successfully completed legal studies amounting to at least three semesters, or
25 the equivalent if the school is on some basis other than a semester basis;
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- 1 C. be certified by the dean of the law school, or by the head of a state agency or any
2 political subdivision thereof, or his or her designee, as being of good character
3 and competent legal ability, and as being adequately trained to perform as a legal
4 intern, including instruction in civil, criminal, and courtroom procedure;
- 5 D. neither ask for nor receive any compensation or remuneration of any kind for such
6 services from the person on whose behalf the services are rendered, but this shall
7 not prevent a lawyer, legal aid bureau, law school, public defender agency, or the
8 state from paying compensation to the eligible law student, nor shall it prevent
9 any such lawyer or agency from making such charges for its services as it may
10 otherwise properly require; and
- 11 E. certify in writing that the student has read and is familiar with the Arizona Rules
12 of Professional Conduct and the rules of the Supreme Court of Arizona and
13 statutes of the State of Arizona relating to the conduct of attorneys.
- 14 6. Requirements and Limitations for Law Students making appearances pursuant to
15 paragraph (d)(3)(F). The law student must:
- 16 A. During the academic year, be duly enrolled in a law school in Arizona which is
17 either provisionally or fully approved and accredited by the American Bar
18 Association, and during the summer, be in good standing at a provisionally or
19 fully approved and accredited law school in Arizona and intending to return, or
20 have graduated and be studying for the Arizona Bar, or have taken the Arizona
21 Bar examination and be awaiting the results ;
- 22 B. Be participating in a volunteer legal services program managed by an approved
23 legal services organization in cooperation with a provisionally or fully approved
24 and accredited law school in Arizona;
- 25 C. Be directly supervised in person by an attorney associated with such volunteer
26 legal services program;

1 D. Receive written consent and acknowledgment of non-representation by the
2 unrepresented person, which written consent shall be obtained by the volunteer
3 legal services program and brought to the attention of the court by the volunteer
4 legal services program.

5 7. Certification for Students Making an Appearance Pursuant to paragraph (d)(3)(A)-(E).

6 A. The certification of a clinical law professor by the law school dean shall be filed
7 with the clerk of this Court and with the state bar and shall remain in effect until
8 withdrawn.

9 B. The certification of an eligible law student making an appearance pursuant to
10 paragraph (d)(3)(A)-(E) by the law school dean, the head of a state agency or any
11 political subdivision thereof, or his or her designee, shall be filed with the clerk of
12 this Court and with the state bar and, unless it is sooner withdrawn, it shall remain
13 in effect until the expiration of eighteen months after it is filed or until the
14 announcement of the results of the first bar examination following the student's
15 graduation, whichever is earlier. As to any student who passes that examination,
16 the certification shall continue in effect until the date the student is admitted to the
17 bar.

18 C. In the case of either a clinical law professor or a law student, certification:

19 i. may be withdrawn by the ~~dean~~ person or agency that granted the
20 certification at any time by filing a notice to that effect, with or without
21 stating the cause for withdrawal, with the clerk of this Court, who shall
22 forthwith mail copies thereof to the clinical law professor or the law
23 student and the supervising lawyer;

24 ii. may be terminated by this Court at any time without cause and without
25 notice or hearing by filing notice of the termination with the clerk of the
26 Court and with the state bar; and

1 iii. shall in no way be considered as an advantage or a disadvantage to the
2 professor or student in an application for admission to the state bar.

3 D. The procedures otherwise provided by law or court rule governing the discipline
4 of lawyers shall not be applicable to the termination of the certification of a
5 clinical law professor or law student pursuant to this rule. Termination of
6 certification shall be without prejudice to the privilege of the professor or student
7 to make application for admission to practice law if the professor or student is in
8 other respects qualified for such admission.

9 8. *Supervision.* In this rule, “supervising lawyer” means either a clinical law professor or a
10 member of the state bar in each case whose service as a supervising lawyer for this
11 program is approved by the dean of a provisionally or fully approved and accredited law
12 school in which the law student is enrolled or by the head of a state agency or any
13 political subdivision thereof, or his or her designee. An eligible law student shall do any
14 of the things permitted by this rule only under the supervision of the supervising lawyer.
15 The supervising lawyer shall not delegate this responsibility to another except that the
16 incumbent of a public office may designate one or more qualified deputies for this
17 purpose. The supervising lawyer shall:

18 A. assume personal professional responsibility for the student’s guidance in any
19 work undertaken and for supervising the quality of the student’s work;

20 B. assist in the student’s preparation to the extent the supervising lawyer considers it
21 necessary; and

22 C. agree to serve as a supervising lawyer and to participate in the program or
23 activities authorized and certified by the dean of a provisionally or fully approved
24 and accredited law school’s juris doctorate program.

25 9. *Miscellaneous.*

- 1 A. To the extent that a professor or student is engaged in practice of law under this
2 rule, the professor or student shall, for the limited purpose of performing
3 professional services as authorized by this rule, be deemed active members of the
4 state bar (but not required to pay fees).
- 5 B. The provisions of this rule shall govern rather than the provisions of other rules
6 relating to admission and discipline.
- 7 C. Nothing contained in this rule shall affect the right of any person who is not
8 admitted to practice law to do anything that person might lawfully do prior to the
9 adoption of this rule.
- 10 D. The rules of law and of evidence relating to privileged communications between
11 attorney and client shall govern communications made or received by professors
12 or students certified under the provisions of this rule. All persons participating in
13 a program of instruction pursuant to which a professor or student is certified
14 under this rule are enjoined not to disclose privileged or confidential
15 communications whether in the implementation of a course of instruction or
16 otherwise.
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